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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,386	09/18/2003	Michael C. Withiam	03-203	7517

7590  
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11/29/2007

EXAMINER
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OH, SIMON J

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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11/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/666,386

Applicant(s)

WITHIAM ET AL.

Examiner

Simon J. Oh

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Papers Received***

Receipt is acknowledged of the applicant's response, received on 14 September 2007.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 1, 4, 5, 6, 8-10 under 35 U.S.C. 102(e) as being anticipated by Withiam *et al.* (U.S. Patent No. 7,163,669, hereinafter Withiam I) is hereby withdrawn.

The rejection of Claims 1, 4, 5, 6, 8-11 under 35 U.S.C. 102(e) as being anticipated by Withiam *et al.* (U.S. Patent Application Publication No. 2004/0001794, hereinafter Withiam II) is hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 1, 3, 4, 5, 6, 8-11 under 35 U.S.C. 103(a) as being unpatentable over Klein (U.S. Patent No. 4,388,301) in view of Withiam (U.S. Patent No. 4,557,916, hereinafter Withiam III) is hereby withdrawn.

Claims 1, 3-6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (U.S. Patent No. 4,388,301) in view of Ishida *et al.* (U.S. Patent No. 7,041,265)

The Klein patent teaches a deodorizing acne treatment composition, which in one embodiment comprises calcium silicate in an amount of 2.00% by weight. The disclosed composition further comprises fragrance and water as a carrier (See Example IV). The composition has an advantage of absorbing facial oils to assist in treating acne (See Column 5, Lines 15-27).

The Klein patent does not explicitly disclose the formula of the calcium silicate or its properties.

The Ishida *et al.* patent discloses an alkaline earth metal basic silicate particle having a  $\text{SiO}_2/\text{MO}$  molar ratio in a range from 0.1 to 0.90 (See Claim 1). The silicate particles have an oil absorption property from 1 to 150 ml/100g and a median diameter from 0.1 to 20 microns (See Column 10, Lines 6-12).

It would be obvious to one of ordinary skill in the art to incorporate the silicate particles of Ishida *et al.* into the compositions taught by Klein. One of ordinary skill in the art would recognize that the oil absorption properties exhibited by the alkali earth metal silicates of Ishida *et al.* make the particles suitable for incorporation into the cosmetic compositions of Klein, as those deodorizing acne treatment compositions are disclosed as being useful for absorbing facial oils to assist in treating acne. As the Klein patent already discloses the use of calcium silicates in furtherance of this goal, one of ordinary skill in the art could use the silicates of Ishida *et al.* in place of these unspecified calcium silicates with a reasonable expectation of success.

With regard to the limitations of Claim 5, as the prior art has disclosed alkaline earth metal silicates having the same formula and substantially similar oil absorption properties, it is the position of the examiner that the limitations in that claim are met by the inherent disclosure of the prior art. Thus, the instantly claimed invention is prima facie obvious.

### ***Double Patenting***

The rejection of Claims 1, 3, 4, 5, 6, 8-11 on the ground of nonstatutory obviousness-type double patenting over Claim 1 of U.S. Patent No. 7,163,669 is hereby withdrawn

The provisional rejection of Claims 1, 3, 4, 5, 6, 8-11 on the ground of nonstatutory obviousness-type double patenting over Claims 14-21 of copending Application No. 10/185,673 is maintained

### ***Response to Arguments***

Applicant's arguments filed 27 June 2006 have been fully considered and they have been found sufficiently persuasive to overcome the prior art rejections of record, as well as the nonstatutory double patenting rejection over U.S. Patent No. 7,163,669. However, applicant's arguments with respect to the prior art rejections previously set forth are moot in view of the new grounds of rejection set forth above. The provisional double patenting rejection over copending Application No. 10/185,673 is maintained.

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*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh  
Examiner  
Art Unit 1618

sj0

  
MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER